THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+Writ Petition No.9782 of 2005

% 11.07.2007

Between:

The Fishermen Cooperative Society

…Petitioner

And

The Arbitrator/Asst. Director of Fisheries and others

…Respondents

! COUNSEL FOR Petitioner: Sri K. Raghuveer Reddy,

^ COUNSEL FOR RESPONDENT: G.P for Fisheries &

Sri D. Goverdhana Chary for R-5

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JUDGMENT:

The petitioner, a Fishermen Co-operative Society, challenges the order dated 30-03-2005, passed by the A.P. Co-operative Tribunal

(for short '*the Tribunal*'), Hyderabad, in C.T.A.No.50 of 1996.

The petitioner was registered in May 1961 with Nirmal and several other villages, as constituting the area of operation.

The 5th respondent is another Fishermen Co-operative Society, in the neighbourhood of the petitioner, and was registered few months later. At the time of its registration, Soan and 21 other villages were included in its area of operation. Disputes arose between the two societies i.e. the petitioner and the 5th respondent, as regards the right to fish in a tank situated in Sangampet village. Added to this, there exists another uncertainty. While the submergence area of the tank was within the limits of Sangampet village, the *ayacut* is, in that of another village.

A clarification issued by the Principal Secretary to Government, Animal Husbandry and Fisheries, the 4th respondent, through memo dated 06-09-1994, gave rise to the filing of two writ petitions, by the petitioner herein. This Court took note of the scope of dispute, and through its common order dated 23-11-1995, in W.P.Nos.16321 of 1994 and 2345 of 1995, directed that the same be resolved through arbitration, under Section 61 of the A.P.
Co-operative Societies Act (for short '*the Act*').

The petitioner filed an application under Section 61 of the Act, before the Arbitrator-cum-Assistant Director of Fisheries,
the 1st respondent herein. Through order dated 23-04-1996, the Arbitrator held that the petitioner alone has the rights over the village tank of Sangampet.

The 5th respondent filed C.T.A.No.50 of 1996 before the Tribunal. The appeal was allowed on 08-08-1996, and the matter was remanded to the 1st respondent for fresh consideration,
on the ground that the 1st respondent summoned certain documents

on his own accord, and the prescribed procedure was not followed. Petitioner filed W.P.No.18008 of 1996, challenging the order of the Tribunal dated 08-08-1996. The writ petition was allowed on 11-12-2002 and the order of remand, passed by the Tribunal, was set aside. The Tribunal was directed to decide the matter, on merits. Accordingly, the Tribunal considered the matter afresh and allowed the appeal through its judgment dated
30-03-2005 and had set aside the order passed by the
1st respondent.

The petitioner contends that the 1st respondent had summoned the relevant records from the Co-operative and Revenue departments, to go to the root of the matter and gave a specific finding to the effect that Sangampet village was never in the area of operation of the 5th respondent-society and that the conclusion arrived at by the Tribunal is without any basis.

Sri K. Raghuveer Reddy, learned counsel for the petitioner submits that the areas of operation of both the societies are specified in the relevant bye-laws and the records, and there is no scope for any imagination. He contends that after summoning the record from the concerned authorities, the 1st respondent held that, ever since the registration of the petitioner-society, the Sangampet village was part of its area of operation, whereas the said village was never in the area of operation of the 5th respondent. He submits that the sole basis for the claim of the 5th respondent is the so-called translated bye-laws, and that a translation can be never been an improvement of the original.

Learned Government Pleader for Fisheries and Sri D. Goverdhana Chary, learned counsel for the 5th respondent, on the other hand, submit that the record was not clear on this aspect, and it

was for this reason, that the Tribunal had directed the parties to work out their remedies under Section 15-A of the Act.

The petitioner and the 5th respondent were registered under the Co-operative Societies Act, way back in the year 1961, with difference of few months. Section 6 of the Act mandates that, along with an application for registration, the original and one copy of the proposed bye-laws of the society, as adopted by the applicants, must be enclosed. The bye-laws so framed, are required to be in conformity with the Act and the Rules. Rule 5 of the A.P. Co-operative Society Rules indicates the contents and subject-matter of the bye-laws. The bye-laws are to contain as many as 35 particulars, mentioned therein. An important requirement, soon after the name and address of the society, is the area of operation. It is open for the Fishermen Co-operative Society to include several villages in the area of operation, as long as the villages did not form part of any existing society.

It is permissible to bifurcate an existing society, or to carve out new societies, covering the area of operation. In such an event, the Registering Authority would cause necessary amendments and entries in the bye-laws of an existing society.

The dispute between the petitioner and the 5th respondent is purely the one, relating the area of operation. The only way through which, a claim in this regards, could have been presented was, by placing the copy of the bye-laws before the competent authority. In case, a particular village continued to be in the area of a society, it would certainly have a right over the village. Any amount of evidence, except the proof of inclusion of a village,
in the area of operation, in the bye-laws; would be of no use, or significance.

On the basis of a direction issued by this Court, the petitioner

initiated the proceedings under Section 61 of the Act, before the 2nd respondent. On his part, the 1st respondent called for the certificate of registration of both the societies, from the Divisional Co-operative Officer, Adilabad. The record disclosed that the petitioner society was registered with 18 villages, as its area of operation. Item 8 is Sangampet village, and it continued to be in the area of operation of the petitioner, as of now. On the other hand, the certificate of registration of the 5th respondent issued by the Divisional Co-operative Officer, Adilabad, marked as Ex.C-3, disclosed that the 5th respondent had 22 villages in its area of operation, and Sangampet village is not one of them. The authenticity of Ex.C-3 is not disputed.

The Tribunal, however, refused to take Ex.C-3 into account, on the ground that there existed some discrepancy between Telugu bye-laws, on the one hand, and English bye-laws, on the other hand, marked as Ex.B-2, filed on behalf of the 5th respondent. Under this, six villages, including Sangampet were shown. The source of Ex.B-2 is not forthcoming. This Court has also summoned the records and enquired from the learned counsel for the 5th respondent, as to how there can be a discrepancy between Telugu bye-laws, on the one hand, and English bye-laws, on the other hand. No valid explanation is forthcoming. The mere fact that Ex.C-3 was obtained by the 1st respondent, on his own accord, does not vitiate the finding. Even in proceedings before the Civil Court, the records obtained from the Government office have their own evidentiary value.

Another aspect that weighed with the Tribunal was, the fact that the 5th respondent was permitted to carry fishing operations in the tank of Sangampet, for the past several years. The mere fact that the 5th respondent harvested fish, at a time, when there

was no dispute; does not take away the right of the petitioner. The 1st respondent had arrived at correct and proper conclusions, based on record, and the findings were set aside by the Tribunal on certain surmises and imaginations.

Hence, the writ petition is allowed, and the order in C.T.A.No.50 of 1996, dated 30-03-2005 is set aside. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt.11-07-2007.

Note:
L.R. copy to be marked.

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